

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA :
:
-v.- : S1 19 Cr. 366 (LGS)
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STEPHEN M. CALK, :
:
Defendant. :
:
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SCHOFIELD, D.J.:

This matter came before the Court on the Government's motion ("Government Motion"), exhibits, and the declarations of various Government officials (collectively, the "Government Submission"). The Government Submission was filed *ex parte, in camera*, and through the Classified Information Security Officer on June 8, 2021.

The Government Submission sought a protective order, pursuant to Section 4 of the Classified Information Procedures Act ("CIPA") and Rule 16(d)(1) of the Federal Rules of Criminal Procedure, regarding disclosure of certain information. After *ex parte, in camera* consideration of the Government Submission, this Court finds:

1. That the Government Submission contains and describes classified information that requires protection against unauthorized disclosure. That information is described with particularity in the Government Submission.
2. The head of the department that has control of the classified information described in the Government Submission, after actual personal consideration, has lodged the state secrets privilege with respect to that classified information.

3. Disclosure of the classified information that the Government Submission seeks to delete from disclosure (the “Deleted Classified Material”) to the defense or the public could reasonably be expected to cause serious damage to the national security.

4. The Deleted Classified Material is not discoverable under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, or Rule 16 of the Federal Rules of Criminal Procedure. In addition, the Deleted Classified Material is not helpful to the defense, that is, useful to counter the Government’s case or bolster a defense, as required under *United States v. Aref*, 533 F.3d 72, 78 (2d Cir. 2008).

Accordingly, it is:

ORDERED that the Government Motion is granted, and the Deleted Classified Material need not be disclosed to the defense; and it is further

ORDERED that the Government Submission is hereby sealed, and shall remain preserved in the custody of the Classified Information Security Officer, in accordance with established court security procedures, until further order of this Court.

SO ORDERED in Chambers this _____ day of _____, 2021

THE HONORABLE LORNA G. SCHOFIELD
United States District Judge
Southern District of New York